IN THE

Supreme Court of the United States

October Term, 1961

No. 677

Petition for a Writ of Certiorari to the Supreme Court of the State of Florida, and to the District Court of Appeal of Florida, Third District, and to the Circuit Court of the Eleventh Judicial Circuit, In and For Dade County, Florida

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IN THE

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October Term, 1961

No.

CHARLES O. MORGAN, individually, and as the representative of all other persons of a class similarly situated, WILLIS E. GARRETT, and THE MIAMI BEACH INDEPENDENT PRESBYTERIAN CHURCH, also known as THE MIAMI BEACH FIRST PRESBYTERIAN CHURCH, a corporation,

Petitioners,

vs.

PRESBYTERY OF THE EVERGLADES, a corporation, and CLARA KROME WILSON, for and on behalf of herself, and for and on behalf of all other persons similarly situated,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the State of Florida, and to the District Court of Appeal of Florida, Third District, and to the Circuit Court of the Eleventh Judicial Circuit, In and For Dade County, Florida

Your Petitioners, CHARLES O. MORGAN, individually and as the representative of all other persons of a class similarly situated, WILLIS E. GARRETT, individually, and THE MIAMI BEACH INDEPENDENT PRES-

BYTERIAN CHURCH, also known as THE MIAMI BEACH FIRST PRESBYTERIAN CHURCH, a non-profit Florida corporation, respectfully petition this Honorable Court and pray that this Court will issue its Writ of Certiorari to the Supreme Court of the State of Florida or to the District Court of Appeal of Florida, Third District, to review the opinion of the said District Court of Appeal of Florida, entered on January 5, 1961, and to review the order of the Supreme Court of the State of Florida, entered September 13, 1961.

Petitioners also pray that this Court review, by its Writ of Certiorari, the Order of the Supreme Court of Florida, not only of September 13, 1961, but the order wherein the Petition for Rehearing filed by the attorneys for your Petitioners was denied by the said Court on October 23, 1961.

OPINIONS BELOW

The Final Decree of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida is not reported officially. The decree is set forth in full in the Appendix hereto.

The Opinion of the District Court of Appeal of Florida, Third District, filed January 5, 1961, reversing the Final Decree of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida.

The Opinion filed by the Supreme Court of Florida September 13, 1961 as to the Writ of Certiorari having been issued and denial of the Petition for Rehearing by the Supreme Court of Florida on October 23, 1961.

STATEMENT OF GROUNDS FOR JURISDICTION

The Order of the Florida Supreme Court denying the Petitioners' Petition for Rehearing was made and entered on October 23, 1961. The Petition for Rehearing had been filed relative to the Order of the Supreme Court of the State of Florida entered September 13, 1961, which Order did rule as to the Writ of Certiorari having been issued, with argument having been heard, quashing the said Writ of Certiorari.

The jurisdiction of this Court is invoked under 28 U. S. C. 1257, sub-paragraph 3, because your Petitioners and the membership of the class so represented have been deprived of due process of law and, further of freedom of religion, as concerns the free exercise and enjoyment of religious worship in their religious edifice and church, thereby denied equal protection of the law under the 14th Amendment to the United States Constitution by State action through the decision and judgment of the District Court of Appeal of Florida, Third District, and the Supreme Court of Florida, an agency of the State of Florida, likewise abridging and violating Section 5 of the Constitution of the State of Florida, in addition to Article I of the Constitution of the United States of America.

The decisions on which review is sought were rendered by the highest Court of the State. All appellate remedies of the State Court have been exhausted.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The due process and equal protection clauses of the 14th Amendment to the United States Constitution, Article 1 of the Constitution of the United States, Section 5 of the Constitution of the State of Florida.

STATEMENT OF THE CASE

Procedural History of the Case

A Complaint for Declaratory Decree and to quiet title was filed by the Presbytery of the Everglades, a corporation, and Clara Krome Wilson, for herself and a class, against the Petitioners herein, including THE MIAMI BEACH INDEPENDENT PRESBYTERIAN CHURCH, a non-profit Florida corporation, which complaint was filed on November 13, 1958.

A chronological history of the facts material to the consideration of the questions presented is as follows:

In November, 1935, the Respondent Presbytery approved an application from some thirty-five persons for the establishment of a Presbyterian Church in Miami Beach, Florida, to be known as The Miami Beach First Presbyterian Church. Presbytery, after certain pledges and covenants, declared the persons so applying to be members of the Presbyterian Church and that they constituted a Church according to the Westminster Confession of Faith and the Rules of Government and Discipline as provided in the Book of Church Order.

After the establishment of The Miami Beach First Presbyterian Church and to the knowledge of Presbytery, a non-profit Florida corporation, duly authorized by the State was formed, with charter approved in 1940, which Florida corporation was called The Miami Beach Presbyterian Church, a non-profit Florida corporation. The charter provided that, by a vote of three quarters of the members of the corporation, its connection with the jurisdiction of the Presbyterian Church in the United States "may be severed". Another provision of the charter provided "it being understood that the title to such property is vested in the corporation and not in the denomination with which it is connected".

Vacant and real property was purchased in Miami Beach, Florida on March 6, 1941 by the non-profit Florida corporation with no money received from Presbytery and thereafter a church was erected thereon. The funds for the erection of the church were furnished over the years by the members and by visitors of various denominations, in attendance.

In July, 1954, after an installation with a value of at least $187,000.00 was built on the premises and realty, a notice of a meeting called for August 2nd, 1954, for the purposes of withdrawing the Church's membership in the Presbyterian Church in the United States was published. The meeting was duly held and the Church, by an overwhelming majority (with only six members voting against withdrawal) voted to become independent in the sense of and as concerns Presbytery only, but the Church continued at all times adhering to the Presbyterian faith, to the Westminster Confession of Faith, to the Presbyterian Book of Church Order and the Presbyterian Organization.

The articles of by-laws were legally changed with the new name being The Miami Beach Independent Presbyterian Church.

No action was commenced against the Church corporation and Petitioners until November, 1958, and in the meantime the record reflects the Church prospered, membership grew and from a budget of $115,000.00 in 1959, $86,000.00 was paid for the support of missionaries dedicated to the Protestant faith and the work of the Lord. No financial support was received from Presbytery and no deviation was made from the Presbyterian Book of Church Order or the Westminster Confession of Faith. The bill of complaint against Petitioners was filed on November 13, 1958 by Respondents. By final decree dated September 18, 1959, the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, in Chancery, held in favor of defendants, Charles O. Morgan, et al, your petitioners herein, and what might be called "the local congregation".

By opinion dated January 5, 1961, the District Court of Appeal of Florida, Third District, did reverse the decision of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, which lower Court had adjudicated that equitable title to the real property, upon which is located the Church, is in one of your Petitioners, The Miami Beach Independent Presbyterian Church, a non-profit Florida corporation.

A petition as to a writ of certiorari was filed in February, 1961 to review the opinion of the District Court of Appeal of Florida, Third District and the Supreme Court of Florida, on September 13, 1961, by opinion did

quash the writ of certiorari. An order denying the petition for rehearing, filed by your Petitioners herein, was entered on October 23, 1961.

QUESTIONS PRESENTED

Point I.

ARE THE PETITIONERS, INCLUDING A NON-PROFIT FLORIDA RELIGIOUS CORPORATION, THE MIAMI BEACH FIRST PRESBYTERIAN CHURCH, CITIZENS AND TAXPAYERS, DEPRIVED OF FREE WORSHIP OF RELIGION, DUE PROCESS OF LAW AND DENIED EQUAL PROTECTION OF THE LAW UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES BY THE ACTION OF THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT, AND THE SUPREME COURT OF FLORIDA?

The answer is YES. The rulings above referred to

(a) deprive your Petitioners of their church building by a **Court order based upon an ecclesiastical ruling:** Ecclesiastical courts are held to be spiritual only—have jurisdiction over spiritual and religious matters—not to have control over materjal property rights and matters of realty;

(b) deprive your Petitioners of their right to worship in their own Church property, and bar your Petitioners from controlling their own Church edifice, despite

the fact of the Church's due incorporation under the laws of the State of Florida, as a non-profit corporation, and despite the fact that the Church had withdrawn, in accordance with its corporate charter, from the Presbytery by the majority vote of the Church (corporate) membership.

Point II.

ARE THE RIGHTS OF RELIGIOUS FREEDOM, AS GUARANTEED BY THE 1st AND 14th AMENDMENTS OF THE U. S. CONSTITUTION VIOLATED WHEN AN INCORPORATED CHURCH PROPERTY IS BY DECREE OF THE JUDICIARY OF THE STATE OF FLORIDA, PROHIBITED FROM BEING USED FOR RELIGIOUS WORSHIP BY THE PARTIES AND MEMBERS WHO CONSTRUCTED IT IN THEIR FREE RIGHT OF RELIGIOUS WORSHIP, AND WHO LEGALLY VOTED, IN ACCORD WITH THE RECOGNIZED STATE RELIGIOUS CHARTER, TO WITHDRAW FROM THE NATIONAL RELIGIOUS ORGANIZATION?

HOW FEDERAL QUESTIONS WERE PRESENTED

Federal questions were properly raised in briefs and in appeals, and particularly, in the brief of the appellees, your Petitioners herein, filed with the District Court of Appeal of Florida, Third District; and, further, were raised in certiorari to the District Court of Appeal of Florida, Third District, in the argument and brief. In particular, there was raised the constitutional question

of Freedom of Religion, as guaranteed by the Constitution of the United States, Amendments 1 and 14 and Section 5 of the Constitution of the State of Florida; and, in particular, in Point 3 of the Brief in support of the Petition for Writ of Certiorari, which is as follows:

Point III.

FREEDOM OF RELIGION AS GUARANTEED BY THE FLORIDA CONSTITUTION CONTROLS. THE MEMBERS AND MEMBERSHIP AND CHURCH COURTS HAVE NO JURISDICTION OVER THE REALTY.

To state that the controlling members of the Florida non-profit corporation known as THE MIAMI BEACH INDEPENDENT PRESBYTERIAN CHURCH cannot maintain their own form of Church government and their own form of faith is a clear violation of their constitutional privileges.

The Constitution of the State of Florida, Section Five, states as follows:

> "RELIGIOUS FREEDOM: LIBERTY OF CONSCIENCE, ETC. The free exercise and enjoyment of religious profession and worship shall forever be allowed in this State, and no person shall be rendered incompetent as a witness on account of his religious opinions, but the liberty of conscience hereby secured shall not be so construed as to justify licentiousness or practices subversive of or inconsistent with the peace or moral safety of the State or society."

The Petitioners (Respondents here) have utilized their democratic rights and voted to become independent. They wanted to retain the Presbyterian name and form of Church government, which they have done, but wanted no relationship with the hierarchy of the Presbytery, due in part to the overbearing and Pontius Pilate attitude of that body and its treatment of Petitioners. To rule otherwise is to deprive Petitioners of their freedom of worship.

In **State, ex rel Singleton v. Woodruff**, 13 So. 2d 704, the Court stated:

> "Freedoms of religion and of the press, as guaranteed by Constitution of United States, Amendments 1, 14 and this Section and Sections 5 and 13 of the Declaration of Rights are absolute so long as public morals, public health, public safety and convenience are observed."

Here is an example of the purest and strongest type of religious endeavor being practiced by the Miami-Beach Church; mission endeavor is unquestioned and adherence to its religious principles is paramount. This group, your Petitioners, has voiced its request for religious freedom. Unhampered by any action of others, the church has prospered. To take from this congregation—The Miami Beach Independent Presbyterian Church, also known as The Miami Beach First Presbyterian Church—their house of worship after nineteen (19) years, would be a violation of the guarantees of the Constitution of Florida to its citizens.

Thus, the constitutional question has been raised and

was thus presented, and was consistently so raised and argued.

REASONS FOR GRANTING WRIT OF CERTIORARI

I. Inasmuch as a judicial decision of a state court can invade protected religious liberty, no less than can an act of the legislature, the decision of the District Court of Appeal—Third District—of the State of Florida as affirmed by the Supreme Court of Florida, constituted an invasion of religious freedom as guaranteed by the 1st Amendment and the 14th Amendment to the United States Constitution.

II. The constitutional guarantees of freedom of religion, and property rights as exist under guarantees of due process of law are violated when, after 18 years of incorporation, the right to freely worship, as guarantegd by the U. S. Constitution, and right to property as represented by corporate assets in a religious edifice constructed by local religious group, are taken away and granted to a national religious organization that contributed no funds to the corporation or church, when the action of withdrawal from the national religious organization was legally consummated under a recognized corporate charter, and there had been no abandonment of the fundamental religious doctrine.

III. Under the broad constitutional principles of religious freedom and its guarantees, and of equity, a national ecclesiastical and religious

organization is estopped after 18 years of acquiescence as to a church corporate charter and its provisions, from claiming the possession of and church operation, and forcing the national organization religious order and discipline upon a local church group, which had continued spiritually in the same recognized religious doctrine, even after severance from the national organization.

It is recognized that a judicial decision, no less an action of legislation, which invades protected religious liberty is invalid (see Shelly vs Kraemer, 334 U.S. 1, 1 L. Ed. 1161, Backus and Sons v. Ft. Street Union Depot 169 U.S. 557, 42 L. Ed. 853. It is submitted that the First Amendment, with the application of the Fourteenth Amendment, guarantees to the Petitioners their right to their religious freedom in severing their connection with Presbytery of the Everglades, a subsidiary of the Presbyterian Church of the U. S.

This Honorable Court has passed, concerning the Presbyterian faith, on issues with one of the ruling and early cases being that of Watson vs. Jones (US) 13 Wall 679, 20 L. Ed. 666. Altho this case involved a struggle between two factions on the slavery issue, this involved a struggle between factions of the northern branch of the Presbyterian Church. The southern branch withdrew from Presbytery, and this is exactly what this religious corporation did under its charter - withdrew from its parent organization.

As stated by Mr. Justice Jackson, in the religious case of Kedroff vs. Saint Nicholas Cathedral, 344 U.S. 114, 97 L. Ed. 143, "Nothing in New York law required this de-

nomination to incorporate its Cathedral" • • • When it sought the privilege of incorporation under the New York law applicable to its denomination, it seems to be that this Cathedral and all connected with its temporal affairs were submitted to the New York Law".

In this case, it follows that this organization when incorporated was submitted in this sense to the Florida law. BUT the corporate charter did provide as follows:

> "The general nature and object of this corporation shall be to establish a church organization or society to be Presbyterian in its doctrine, tenets and form of church government as such doctrines, tenets and government are prescribed by the Westminster Confession of Faith, Catechisms and Form of Government in use by the various Presbyterian denominations, and to be connected with and subject to the jurisdiction of the Presbyterian Church in the United States; provided, however, that by vote of three-fourths (¾) of the members of this corporation who are present at a regularly called meeting, its connection with and jurisdiction of the said Presbyterian Church in the United States may be severed, and when or if such relations are severed it may connect itself with any other body or denomination of Christians if it so desires."

Thus it provided for severance, just as the southern branch of the Presbyterian Church severed itself, taking with it its church properties, during the approximate period of the Civil War. When the local congregation, in a regularly called meeting in 1954, voted under their corporate

charter, duly recognized, to withdraw and sever from Presbyterian Church in the United States, they did so with a vote of 136 for, and 6 against. It was argued before this Honorable Court in the case of Shepard vs. Barkley, 62 Law Ed 939, October term, 1917, that in that case, involving again the northern branch of the Presbyterian Church, not the Southern, that the enforced merger of the membership, into and with the Presbyterian Church is a violation of the law of the land and is void. It was further argued in that case that no amendment was ever made to the constitution of the Cumberland Church authorizing the merger. In the case at hand, a corporation charter existed and was of record for EIGHTEEN YEARS, unassailed, permitting a severance and withdrawal from Presbytery of the United States, provided the religious doctrine of the Westminster Confession of Faith was adhered to; and it was so adhered to.

Thus, a violation of freedom of worship, as guaranteed, exists when the Florida District Court of Appeal, Third District, in an action upheld by the Supreme Court of Florida, after a legal severance, as provided for in the state non-profit religious corporate charter, does not permit this congregation to continue their worship in their edifice, even though they have adhered to the principles of the Westminster Confession of Faith.

This instance represents a test of a lawful severance which occurred, not in the northern branch of the Presbyterian Order, but in the Southern Branch which initially and originally approximately one hundred (100) years ago performed the same act of severance. This Southern Branch is now protesting the action of the Petitioners and is being aided and abetted by the judicial act

and Decrees of the Supreme Court of Florida, even though they were lawfully permitted to sever under their corporate charter, recognized by Florida, with legal title to the property always having been in the Florida corporation.

It further constitutes an invasion of the constitutional principle, as established in **Watson** v. **Jones, Supra** and reaffirmed in **Shepard** v. **Barkley, Supra,** that this conflict in the instant case (which arose in an argument basically involving the minister, a member of the clergy, and freedom to select the clergy) is an ecclesiastical matter and should be decided by the church courts and not by the civil courts.

It is further submitted that the net result of the judicial action of the State of Florida was similar in effect and violated the same constitutional guarantees of religious freedom and due process of law as occurred in the case of **Kedroff** v. **Saint Nicholas Cathedral, Supra.** The equity of the facts and circumstances reflect:

> (a) That the Southern Branch of the Presbyterian Church never supplied any funds for this operation, purchase or congregation; thus no trust doctrine can be applied;
>
> (b) That the Southern Branch of the Presbyterian Church, after authorizing this type of corporate charter through acquiescence over the years, has been sustained in taking over a religious edifice and depriving the citizenry of their freedom of worship and secondarily of their property, when all that was done by the Peti-

tioners was a duplicate of that which the Southern Branch itself had done in the past;

(c) That, in continuing to abide in their religious faith, to and with the doctrine of the Westminster Confession of Faith, the recognized corporate structure and by-laws of the Florida corporation which permitted the legal withdrawal, your Petitioners thus acted lawfully, and the action of the Florida Supreme Court, in effect, affirming the District Court of Appeal, Third District of Florida, is unfair, violates Petitioners' constitutional guarantees, both federal and state, and by court order forces unwanted religious discipline and membership upon a group of worshippers who acted legally, with notice, under an accepted state charter.

Mr. Justice Frankfurter, in the **Kedroff** case, **Supra**, stated:

"This very limited right of resort to courts for determination of claims, civil in nature, between rival parties among the communicants of a religious faith, is merely one aspect of the duty of courts to enforce the rights of members in an association, temporal or religious according to the laws of that association. See, Gonzalez v. Roman Catholic Archbishop, 280 U.S. 1.

Legislatures have no such obligation to adjudicate and no such power."

It is submitted that, since a state judicial action can

have the same force and effect as a legislative act, as argued, there basically exists "no such power", as in the case at hand, for the Florida judicial act to result in being, not only inconsistent in application of corporate law, but thereby deprive your Petitioners of their constitutional rights of freedom of religion.

An additional reason for granting said Writ is the fact that when the State exercised its reserved power through its judiciary, it acted in direct conflict with the corporate charter it had authorized and which was in effect. Thus, since in a religious controversy, a church by proper class representation (**Helm** v. **Zarecor**, 222 U.S. 32, 56 L. Ed. 77) can invoke the visitorial power of a court of equity, in this case, under equitable principles, **together with the constitutional violations**, certain facts with legal rights exist. To wit, under the equitable doctrine of estoppel the holding of the Court should prevail against the Presbytery of the Everglades, a subsidiary of the Presbyterian Church of the United States, since this congregation, as represented by your Petitioners, was permitted to exist under its corporate charter and, as the years passed, through religious endeavor, the congregation in their exercise of religious worship constructed their edifice and practiced their religion independently, with no interference for over eighteen (18) years.

It is respectfully submitted that this Honorable Court should take jurisdiction of this cause since it involves constitutional questions of freedom of religion under constitutional guarantees and, in addition, the question of taking property under these conditions without due process of law. This Court can have such jurisdiction although the federal question is not decided by the lower courts

or the case is decided on local or state questions only, and the court will not lose jurisdiction by omitting to decide the federal question. In such case, this Court can decide the case on any ground—state or federal—on which it desires to place its decision. (**Shepard** v. **Barkley, Supra; Seiler** v. **Louisville and N. R. Co.**, 213 U.S. 191, 53 L. Ed. 757.)

CONCLUSION

The Petitioners submit that the U. S. Constitutional guarantees of freedom of religion have been violated, that thereby and secondarily, they have been forced, if they are to utilize their church edifice and method of worship, to integrate against their free will, with a national religious organization.

This has been forced on them by action of the District Court of Appeal, Third District, State of Florida, and the action of the Supreme Court of Florida, even when they so acted under legal provisions, and voting a severance, as provided for by a duly authorized non-profit religious corporation of the State of Florida. Jurisdiction of this Honorable Court is well founded in this cause as seen from the record, and particularly since this action on their part, as against the Southern Branch of the Presbyterian Church, known as the Presbyterian Church in the United States, is only an action similar in nature to that taken by this branch of the Presbyterian Church during the Civil Conflict of about one Hundred Years past.

This case is of transcendent importance in the cause of preserving religious freedom and freedom of worship.

and this Court represents the last hope of your Petitioners that those basic Constitutional rights which have been breached, will be held inviolate.

Respectfully submitted,

Robert A. Peterson,
1000 Lincoln Road,
Miami Beach, Fla.
Attorney for Petitioners.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition for Writ of Certiorari and Appendix thereto has been served by me this date personally upon Marion Sibley, Esq., attorney for the Presbytery of the Everglades, and Clara Krome Wilson, for and on behalf of herself, and for and on behalf of all other persons similarly situated, Respondents herein this ____ day of January, 1962.

ROBERT A. PETERSON,
1000 Lincoln Rd.
Miami Beach, Fla.
Attorney for Petitioners.

APPENDIX

COMPLAINT FOR DECLARATORY DECREE AND TO QUIET TITLE

(filed November 13, 1958)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA. — IN CHANCERY. NO. 58C 9781-G

(J. J. Fritz Gordon)

PRESBYTERY OF THE EVERGLADES, a corporation, and CLARA KROME WILSON, for and on behalf of herself, and for and on behalf of all other persons similarly situated,

Plaintiffs,

vs.

CHARLES O. MORGAN, individually, and as the representative of all other persons of a class similarly situated, WILLIS E. GARRETT, and THE MIAMI BEACH INDEPENDENT PRESBYTERIAN CHURCH, also known as The Miami Beach First Presbyterian Church, a corporation,

Defendants.

COME NOW the plaintiffs, PRESBYTERY OF THE EVERGLADES, a corporation, and CLARA KROME WILSON, for and on behalf of herself, and for and on behalf of all other persons similarly situated, and file this their Complaint for Declaratory Decree and to Quiet Title against the defendants, CHARLES O. MORGAN, individually, and as the representative of all other persons of a class similarly situated, WILLIS E. GARRETT, and THE MIAMI BEACH INDEPENDENT PRESBY-

TERIAN CHURCH, also known as The Miami Beach First Presbyterian Church, a corporation, and for such Complaint, allege:

I.

Plaintiff, CLARA KROME WILSON, is a resident of Dade County, Florida, is over the age of 21 years, and brings and maintains this suit for herself and for and on behalf of all other persons similarly situated, who constitute a class so numerous as to make it impracticable to join them as parties plaintiff and to bring them all before the Court. Plaintiff, PRESBYTERY OF THE EVERGLADES, is a corporation organized and existing under the laws of the State of Florida.

Defendant, CHARLES O. MORGAN, is a resident of Dade County, Florida, is over the age of 21 years, and is sued individually, and as the representative of a class composed of many persons, all of whom have a common or general interest in the subject matter of this litigation, and are so numerous as to make it impracticable to bring them all before the Court and to join them as parties defendant. Defendant, WILLIS E. GARRETT, is a resident of Dade County, Florida, and is over the age of 21 years. Defendant, THE MIAMI BEACH INDEPENDENT PRESBYTERIAN CHURCH, also known as The Miami Beach First Presbyterian Church, is a corporation organized and existing under the laws of the State of Florida.

II.

Plaintiff, PRESBYTERY OF THE EVERGLADES,

is a court composing a component part of the authority of the Presbyterian Church in the United States. The power and authority of the plaintiff, PRESBYTERY, is defined and established by the Constitution of the Presbyterian Church of the United States, a part of which is known as the "Book of the Church Order". This Book of Church Order comprises the form of church government, the rules of discipline applicable to the church, its members, its officers, its courts and its orders. The plaintiff, PRESBYTERY, as a judicatory of the Presbyterian Church in the United States, is vested with the power and authority as set forth in Chapter XV, Paragraph 76, of the Book of the Church Order, as follows:

> "The Presbytery has power to receive and issue appeals, complaints, and references brought before it in an orderly manner, and in cases in which the Session cannot exercise its authority, shall have power to assume original jurisdiction; to receive under its care candidates for the ministry; to examine and license candidates for the holy ministry; to receive, dismiss, ordain, install, remove, and judge Ministers; to review the record of Sessions, redress whatever they may have done contrary to order, and take effectual care that they observe the Constitution of the Church; to establish the pastoral relation, and to dissolve it at the request of one or both of the parties, or where the interests of religion imperatively demand it; to set apart Evangelists to their proper work; to require Ministers to devote themselves diligently to their sacred calling and to censure the delinquent; to see that the lawful injunctions of the higher courts are

> obeyed; to condemn erroneous opinions which injure the purity or peace of the Church; to visit churches for the purpose of inquiring into and redressing the evils that may have arisen in them; to unite or divide churches, at the request of the members thereof; to form and receive new churches; to take special oversight of churches without Pastors; to dissolve churches; to concert measures for the enlargement of the Church within its bounds; in general, to order whatever pertains to the spiritual welfare of the churches under its care; to appoint Commissioners to the General Assembly; and, finally, to propose to the Synod or to the Assembly such measures as may be of common advantage to the Church at large."

This power, jurisdiction, and authority so vested in the plaintiff, PRESBYTERY, is applicable to the territory which comprises Dade County, Florida. Plaintiff, PRESBYTERY, is the successor to the St. John's Presbytery, and has succeeded to all the power and authority which may have been exercised by the St. John's Presbytery within the area of Dade County, Florida, prior to the formation, creation, and establishment of the plaintiff, PRESBYTERY.

III.

Under the power vested in the plaintiff, PRESBYTERY, and its predecessor "to form and receive new churches", it received an application prior to November, 1935, for the establishment and formation and creation of a Presbyterian church within the city limits of the City

of Miami Beach, to be known as The Miami Beach First Presbyterian Church. Said application conformed to the provisions of Chapter VI of the Book of the Church Order, which in part provides: "A church can be organized only by the authority of Presbytery".

In November, 1935, the persons seeking the establishment and organization of the said Miami Beach First Presbyterian Church entered into a covenant with the Presbyterian Church in the United States by answering in the affirmative with uplifted hands, the following question:

> "Do you in reliance on God for strength, solemnly promise and covenant that you will walk together as an organized Church, on the principles of the faith and order of the Presbyterian Church in the United States, and that you will study the purity and harmony of the whole body?"

Predicated upon said pledge and covenant, the Presbytery announced and declared said persons to be members of said church, and declared that said members constitute a church according to the faith and order of the Presbyterian Church in the United States.

The Miami Beach First Presbyterian Church, and each and every member thereof, thereupon became fully bound by and subject to the powers, jurisdiction, procedures, code of conduct and Constitution of the Presbyterian Church in the United States, as the same is shown and prescribed by the Westminster Confession of Faith.

catechisms and the form and rules of government and discipline prescribed in the Book of Church Order.

IV.

After the organization of said church as aforesaid, its members sought a corporate charter under the name, "The Miami Beach First Presbyterian Church", and in said charter, it is provided that all members of the church at the time of its organization and all other persons that may become members of the church, shall be members of the corporation. "Provided, however, whenever any member of said body shall cease to be a communicant member in good standing in said body, such person shall cease to be a member of this corporation. The manner, form and requisites of admission to membership in said body (the church) shall conform to the rules of government and discipline that are prescribed in the Westminster Confession of Faith and Book of Church Order referred to above (Book of Church Order of the Presbyterian Church in the United States) copies of which are in the hands of the officers of the church." On April 17, 1940, a corporate charter was granted under the name and style, "The Miami Beach First Presbyterian Church".

V.

Plaintiff, CLARA KROME WILSON, has at all times been a member of the Miami Beach First Presbyterian Church, as the same was established and organized by the plaintiff, PRESBYTERY, in November, 1935, and as such member she has at all times conformed to and has never departed from the rules of government and discipline of the Presbyterian Church in the United States.

as the same are prescribed in the Westminster Confession of Faith and the Book of Church Order. Numerous other persons, members of the Miami Beach First Presbyterian Church, have likewise adhered to and conformed to said rules of government and discipline as aforesaid, and this cause is brought for and on behalf of the plaintiff, CLARA KROME-WILSON, and for and on behalf of such other persons of a class similarly situated.

VI.

After the incorporation of said church, and on or about March 6, 1941, said church purchased the following described property situate, lying and being in Dade County, Florida, to-wit:

> All of block 2 of Normandy Beach South, a subdivision of Dade County, Florida, according to plat thereof recorded in plat book 21 page 54 of public records of Dade County, Florida.

Thereafter, upon said property a church edifice and house of worship was constructed. Said property was dedicated to the sole use and control of the membership of said church who conformed to the rules of government and discipline that are prescribed in the Westminster Confession of Faith and Book of Church Order. Moreover, said property became bound by the rules, regulations and laws of the Presbyterian Church in the United States and was bound to aid in the accomplishment of those spiritual purposes, aims and goals set forth in the Book of Church Order. The individual members of the Miami Beach First Presbyterian Church did not have the power or authority to change or divert the utilization of said

property from that to which it was dedicated because the said church was established, organized and mutually bound and unified with other churches to constitute and compose the whole body of the Presbyterian Church in the United States.

VII.

Prior to August 2, 1954, the defendant, WILLIS E. GARRETT, as the Pastor or Preacher, and certain members of, The Miami Beach First Presbyterian Church sought to call a meeting for the purpose of considering the withdrawal of the Miami Beach First Presbyterian Church from membership or as a component part of the Presbyterian Church in the United States, all of which was contrary to the edicts and orders of the Book of Church Order. Thereupon, the plaintiff, Presbytery's predecessor, issued an injunctive order enjoining said WILLIS E. GARRETT, as Minister of The Miami Beach First Presbyterian Church and Moderator of its Session and congregation, and each and every of the members of the Session of said Church and each and every of the members of the church, from meeting for the purpose of voting on the severance of the Miami Beach First Presbyterian Church and its membership from the Presbyterian Church in the United States.

Under the laws set forth in the Book of Church Order, the Session which composes the ruling elders are in control and manage the spiritual and temporal affairs of the church, and are required to "observe and carry out the lawful injunctions of the higher courts". See, Book of the Church Order, Chapter XIV, Paragraph 65.

Nevertheless, contrary to the injunctive order and wholly without power and authority, said WILLIS E. GARRETT, and the members of the Session on August 2, 1954, sought to nullify the rules, law and orders of the Book of the Church Order and sought to secede from the Presbyterian Church in the United States. In an effort to accomplish this, a motion was made at the meeting of the congregation on said date, and a majority of those present voted to withdraw from the Presbyterian Church in the United States. Those so voting **eo instanti** lost their membership in the Miami Beach First Presbyterian Church because in so doing, they failed to "conform to the rules of government and discipline that are prescribed in the Westminster Confession of Faith and the Book of Church Order", and thereupon lost their right to manage and control the corporate entity of the Miami Beach First Presbyterian Church.

A number of the members of the church determined to remain loyal to their pledge and oath to the Presbyterian Church in the United States, and voted against said motion, and many others stood mute in the face of this effort of the Pastor and the Session to lead the congregation to breach of their pledge and covenant upon which their right to organize as a church was predicated.

The plaintiff, CLARA KROME WILSON, being then and there a member of the Miami Beach First Presbyterian Church, voted against the motion to withdraw or secede, and has at all times stood steadfastly loyal to the Miami Beach First Presbyterian Church, a church which remains a member of the family of churches, which in unity form the Presbyterian Church in the United States.

and has thus remained loyal to the organized church created in November, 1935, by the plaintiff, PRESBYTERY."

VIII.

The former members of the church who, by their vote, sought to secede from the Presbyterian Church in the United States, have continued to use the above-described property as a house of worship for an "independent church", which is in violation of the sworn covenant and agreement entered into between the members and congregation of The Miami Beach First Presbyterian Church, and the Presbytery as the representative of the Presbyterian Church in the United States.

IX.

After the unlawful attempt on the part of the Preacher and the Session to secede as a church, as above set forth, the plaintiff, PRESBYTERY, rendered its judgment and decree against WILLIS E. GARRETT, as Preacher, and the former Session (ruling elders) of The Miami Beach First Presbyterian Church, after due notice and proper trial, in which it was decreed that said persons by reason of their rebellion, are no longer members of The Miami Beach First Presbyterian Church.

The said persons and the dissident former members of The Miami Beach First Presbyterian Church are bound by said decree and said decree deprives them of the right and privilege of further utilizing the church property above described. The force and effect of said decree is to render the church property subject to the control,

management and use of the members of The Miami Beach First Presbyterian Church, as the same is recognized and established by the Presbytery and by the Presbyterian Church in the United States. The force and effect of said judgment and decree is to render it unlawful for the former members of said church to usurp, utilize and occupy said church property.

X.

The plaintiff, PRESBYTERY, and plaintiff, CLARA KROME WILSON, as representative of the class, have brought and maintained this suit to recover the possession of said property and to establish that the title to the above-described property is held by the defendant corporation, The Miami Beach First Presbyterian Church, wholly for the use and benefit of the organized church and its members, which is now and has remained a part and parcel of the family of churches, constituting the Presbyterian Church in the United States.

XI.

Under the powers and authority vested in the plaintiff, PRESBYTERY, by reason of the Book of Church Order, it is authorized to bring and maintain this suit for and on behalf of those members of the Miami Beach First Presbyterian Church who form no part of the dissident group hereinabove referred to. Plaintiff, PRESBYTERY, is given the power and authority under the laws contained in the Book of Church Order to recover, hold, and dispose of the church property above referred to under the circumstances and in the situation hereinabove set forth.

FORASMUCH, THEREFORE, as plaintiffs are without remedy in this cause save and except in a Court of Equity, and to the end that justice may be done, plaintiffs pray:

(a) That this court, by its decree, declare and establish that the members of The Miami Beach First Presbyterian Church who remain a part of the organized Presbyterian Church in the United States, are entitled to the use and ownership of the property described in the complaint.

(b) That this court, by its decree, fix, determine and establish the names of each and every of the persons entitled to participate in and utilize the church property for the aims and purposes of the Presbyterian Church in the United States.

(c) That this court, by its decree, declare and determine that the plaintiff, PRESBYTERY, as the authority of the Presbyterian Church in the United States, is entitled to bring and maintain this suit, to protect the interests and rights of the persons forming the class which has remained loyal to the organized church.

(d) That this court, by its decree, declare and determine the persons who are entitled to manage and control the defendant corporate entity.

(e) That this court, by its decree, quiet the title to the property above described and find and declare that the title to said property is vested and held by and for the benefit of the organized Presbyterian Church on

Miami Beach, which is part of the family of churces composing the Presbyterian Church in the United States.

(f) That this court grant such other and further relief as to it may seem just and equitable.

SIBLEY, GRUSMARK, BARKDULL & KING
605 Lincoln Road
Miami Beach, Florida
Attorneys for Plaintiffs

By: (s) Marion E. Sibley
MARION E. SIBLEY,
of counsel.

ANSWER AND CROSS-COMPLAINT, filed March 4, 1959.

(Caption Omitted)

Come now the Defendants, CHARLES O. MORGAN, individually and as representative of all the other persons of a class similarly situatated, WILLIS E. GARRETT and THE MIAMI BEACH INDEPENDENT PRESBYTERIAN CHURCH, a non-profit Florida corporation, by and through their undersigned attorneys and without waiving the Motion to Dismiss as filed herein, and for their answer to the Complaint for declaratory decree and to quiet title, do state and allege as follows:

1. Admit that the Plaintiff, CLARA KROME WILSON, is a resident of Dade County, Florida, and over the age of 21 years, but deny that she, constitutes a representative of any class relevent to the instant litiga-

tion and do further deny that the Plaintiff, PRESBYTERY OF THE EVERGLADES, is a relevant party herein, but do admit each and every further allegation of Paragraph 1, except for the allegations that the MIAMI BEACH INDEPENDENT PRESBYTERIAN CHURCH is also known as the MIAMI BEACH FIRST PRESBYTERIAN CHURCH, and do generally deny each and every allegation not herein specifically admitted.

2. Admit the allegations of Paragraph 2 as to the fact that the Plaintiff corporation has certain powers and authorities in connection with the Presbyterian Church in the United States, and does further admit that the said Plaintiff corporation is the successor to the St. John's Presbytery in all respects, but do deny each and every further allegation and do further deny that the said Plaintiff or Plaintiff corporation had any authority, control, jurisdiction, or any binding effect whatsoever upon the defendants herein, and does jointly deny each and every allegation not herein specifically admitted.

3. Admit that an application was received in November, 1935, for the establishment and formation of a Presbyterian Church, and that the MIAMI BEACH FIRST PRESBYTERIAN CHURCH was duly established, but deny that the real and personal property held by the Church is a part of, or does belong to the PRESBYTERY or SYNOD or Plaintiffs herein, and do further deny that the said property is the property of the General Assembly, but is the property of the non-profit Florida corporation, which is composed of and controlled by its entire membership and do further deny each and every further allegation of said Paragraph 3, not herein admitted.

4. With reference to and answering the allegations of Paragraph 4 of the Complaint, a corporate charter was obtained under the name of THE MIAMI BEACH FIRST PRESBYTERIAN CHURCH and from the year approximately 1935 to 1940 the congreation of the Defendants herein did meet on the premises of the Miami Beach Women's Club, Miami Beach, Florida, and did not have any individual church real property; but that the said non-profit corporation was duly chartered on April 17, 1940, and in said non-profit corporate charter was a further provision, to wit:

> "The general nature and object of this corporation shall be to establish a church organization or society to be Presbyterian in its doctrine, tenets and form of church government as such doctrines, tenets and government are prescribed by the Westminister Confession of Faith, Catechisms and Form of Government in use by the various Presbyterian denominations and to be connected with and subject to the jurisdiction of the Presbyterian Church in the United States; provided however, that by vote of three-fourths of the members of this corporation, who are present at a regularly called meeting, its connection with and jurisdiction of the said Presbyterian Church in the United States may be severed, and when or if such relations are severed it may connect itself with any other body or denomination of Christians if it so desires."

and a photostatic copy of said non-profit corporate charter is attached hereto and made a part hereof and marked

"Defendants' Exhibit A", and thereafter, from the Defendant Florida corporation only, funds were raised and vacant real property was purchased by and absolute and recorded Deed into the Florida corporation with no limitation on its use, nor to any party "as Trustees", and without any financial help or assistance from any group or unit of the Presbyterian Church in the United States or from the PRESBYTERY OF THE EVERGLADES or its predecessor but solely from the congregation, to the benefit of the non-profit corporation, with the minister of the said group, throughout the years from 1940 on, being paid from the contributions and the general Church support of the individual membership, and that thereafter, upon the vacant property located on 71st Street and Indian Creek Drive in Miami Beach, a structure was built from the individual contributions and proceeds of the membership and again WITHOUT ANY FINANCIAL AID FROM ANY OUTSIDE RELIGIOUS GROUP OR UNIT INCLUDING THE PLAINTIFFS HEREIN, and a picture of the said Church is attached hereto and marked Defendants' Exhibit "B".

5. That the improvements in question were built as a result of the religious toil, devotion, and continued contribution of the individual defendant corporation and group, in a series of three units, with the construction beginning in about 1941 with the last construction completed in 1950 with a first mortgage presently existent on the structure in favor of Chase Federal Savings and Loan Association of Miami Beach, with an approximate remaining principal balance due thereunder of $22,000.00, which calls for payments of $1,000.00 semi-annually on principal plus accumulated interest, which mortgage remains in good standing, and these defendants do further

deny each and every allegation of Paragraph 4 not herein expressly admitted, and futher deny the existence of any trust, express of implied, in favor of the Plaintiffs, and thus allege the action of the Plaintiffs herein is in violation of the Statute of Frauds and in particular Sections 689.05 and 689.06 of same.

6. Answering Paragraph 5 of the Complaint as filed, these Defendants do allege that the Plaintiff WILSON has been on the rolls of THE MIAMI BEACH PRESBYTERIAN group, but has not attended for many years, has not made any financial contribution to the knowledge of these Defendants for at least ten years, and that when the vote severing the connection of the Miami Beach group from the PRESBYTERY stood at 136 for and 6 against, on August 2nd, 1954, the said Plaintiff WILSON was not one of the 6 members present, and these answering Defendants do generally deny each and every further allegation of the said Paragraph 5 not herein expressly admitted.

7. These answering Defendants admit that on March 6, 1941, the property was purchased, as described in the Complaint, but allege that the said property was purchased by the non-profit corporation, under the conditions as set out in the corporate charter, by an absolute conveyance, and with full knowledge of the Plaintiff PRESBYTERY and thus no contract as concerns the Presbytery or the Plaintiffs herein exists, and do further allege the building construction as set out in the said Paragraph 6 was on independent property of a non-profit Florida corporation; that the said property was not taken in the name of the Trustees for the Church group or for the PRESBYTERY; that under the Book of Church

Order, the said corporation was duly governed by its individual membership and by virtue thereof, and remains the property of the said Florida corporation, duly controlled by the vote of the parties and individuals who are the individual members of the said corporation and congregation, with the sole contribution to the final purchase coming from the Church group itself, and not from any outside sources or from Presbytery, and do deny each and every further allegation of the said Paragraph 6.

8. Answering Paragraph 7, these Defendants do admit that a meeting was held on August 2nd, 1954, and allege that the meeting was duly advertised in accordance with the rules and regulations, but allege that the said action was taken in accordance with the provisions of the corporate charter attached hereto that had been unchallenged for over **fourteen years** by the PRESBYTERY or any unit thereof; and that said withdrawal was an effective withdrawal; that in reliance upon this charter, the construction of the various units of the Church had been made, with the investment of thousands of individual capital, and that not only was the withdrawal legal under the circumstances, but that the plaintiffs are estopped from claiming any right, title and interest in the within realty under the doctrines of equitable estoppel by reason of the corporate charter and deed conveyance, and these defendants do affirmatively deny that there were non-voting members at the said meeting, and that only 5 of the membership voted to stay with the Presbytery, and do futher deny each and every allegation not herein specifically admitted.

9. Answering the allegations of Paragraph 8, these Defendants admit that the above property has been used

as a House of Worship; that there has been no fundamental change of use, that they have presently a congregation of 350 members; that there has been a continual religious activity in the furtherance of Protestant Christian ideals; that there has been no diversion to a use fundamentally changed; that the defendants have engaged in an intensive foreign and domestic mission program to the extent that for every dollar of Church Expense, $2.50 has been spent for mission endeavor, contributing over $85,000.00 annually to the mission endeavor, and operating on an annual budget of $115,000. per year, and that these endeavors continue to foster general religious and spiritual progress; and this activity does not violate the sworn covenants entered into by the congregation whereby they rely upon God for strength; that they are working as an organized Church and that this activity is in futherance of the Christian principles as established by their Lord and Saviour, Jesus Christ, and these answering Defendants do deny each and every further allegation not herein specifically admitted.

10. That these answering Defendants do admit that the judgment and decree was entered against the said WILLIS E. GARRETT as Preacher and the Ruling Elders of the said Church, but deny that the force and effect of said decree does render the Church property, which was acquired by absolute Deed, and developed by independent work and contributions of the Defendants, subject to the control, management and use of members of a group known as The Miami Beach First Presbyterian Church, as recognized by the PRESBYTERY, and thereby stripping the Defendants of their church name and assets built by their Christian toil and endeavor over a thirty year period, and firmly allege that the Church

property is the individual property of the non-profit Florida corporation, and do deny each and every further allegation not herein specifically admitted.

11. Answering the allegations of Paragraph 10, admit that this litigation has been commenced, but deny each and every further allegation of the said Paragraph 10 and Paragraph 11 of the Complaint, as set out.

WHEREFORE, these Defendants move for dismissal of the Complaint as filed at Plaintiff's costs.

CROSS-COMPLAINT

Comes now the original Defendants and Cross-Complainants in connection with this cause, and for their Cross-Complaint do state and allege as follows:

1. That the facts of corporate existence and charter, church organizations as to dates, and general allegations of the above Answer are reaffirmed and realleged.

2. That the corporate charter, dated April 17, 1940, and attached hereto as Defendants' Exhibit "A", did make reference to the power of its individual members to withdraw from the Presbytery, and said charter dated April 17, 1940, does further state as follows, to-wit:

> "That the said corporation shall have power to acquire, hold and dispose of real estate and personal property, * * * *; it being understood that the title to such property shall vest in the corporation and not in the denomination with which it is connected."

and that the said real estate was acquired THEREAFTER by direct Deed into the said non-profit corporation by Warranty Deed dated March 6, 1933, filed April 8, 1941, and recorded in Deed Book 2147 at Page 287 of the Public Records of Dade County, Florida, WITH NO RESTRICTIVE USES THEREIN, for a consideration of $8,500.00, and that thereafter with no outside financial help from any of the Plaintiffs herein, improvements were duly constructed thereon, principles of Christian faith were furthered, and that the said property has been used for good and constant Christian ideals, with an active Christian congregation throughout the years carrying on a religious program including a large mission program as outlined.

That the action of the plaintiffs, over nineteen years after the organization of the non-profit corporation with the charter clearly specifying its powers, and over FIVE years from the disassociation with Presbytery, is inequitable, unfair, and unwarranted and would deprive the Defendants of their Altar of Worship and church home which by their honest toil and sweat of Christian endeavor has been sustained in the face of many problems, and does further constitute an unlawful and unspiritual assault on the religious, moral, and temporal properties of these Defendants, and a broadsided, flagrant, and Judas-like attempt to set aside a corporate structure recognized for the past 19 years by the State of Florida, wrenching from these Defendants their hard earned property, and that the title to the real and personal property of the within corporation is the physical and spiritual property of the corporation, with the corporation managed by the majority vote of its duly recognized membership on the rolls of the church body.

FORASMUCH therefore, and to the end that civil and religious justice may be done, the Defendants herein do pray:

a. That this Court duly take jurisdiction hereof and by this Decree, declare and establish that the realty as herein set out, being corporate realty from its inception, remain and be decreed to be the property of the corporation, duly controlled by the defendants herein.

b. That this Court by its decree, affirmatively fix, determine and establish that the said Florida corporation, duly controlled by the Defendants herein, since its establishment in 1940, including its amended Charter in 1954, be the due and lawful owner and have control of the said realty.

c. That this Court, by its decree, declare and determine that the Plaintiffs herein, in the event the Motion to Dismiss as filed herein is not sustained, are not entitled and are estopped to bring and maintain this suit.

d. That this Court, by its decree, declare and determine that the present corporation, including the Defendants herein, who have managed and controlled the independent Church realty and affairs and Christian religious progress of the said Church shall manage and control the Defendant corporate entity, with no express or implied trust existing in favor of the Plaintiffs.

e. That this Court, by its Decree, duly quiet the title in favor of the Defendants herein.

f) That this Court grant such other and further relief as to it may seem just and equitable.

COPELAND, THERREL, BAISDEN & PETERSON

By: /s/ Robert A. Peterson
Miami Beach First National Bank Bldg.
Miami Beach, Florida
Attorneys for the Defendants and the the Cross-Complainants.

Certificate of service omitted.

ANSWER AND CROSS-COMPLAINT.

(DEFENDANTS' EXHIBIT "A")

NO. 6

IN RE: THE MIAMI BEACH FIRST PRESBYTERIAN CHURCH

CHARTER
Dated April 17, 1940
Filed April 23, 1940
Recorded in Corporation Book 49 at page 147
Clerk's File No. N-21219

The name of this corporation shall be The Miami Beach First Presbyterian Church and the corporation shall exercise its corporate existence and be located in the City of Miami Beach, Dade County, Florida.

The general nature and object of this corporation shall be to establish a church organization or society, to be Presbyterian in its doctrine, tenets and form of church government as such doctrines, tenets and government are prescribed by the Westminister Confession of Faith, Catechisms and Form of Government in use by the various Presbyterian denominations and to be connected with and subject to the jurisdiction of the Presbyterian Church in the United States; provided however, that by vote of three-fourths of the members of this corporation, who are present at a regularly called meeting, its connection with and jurisdiction of the said Presbyterian Church in the United States may be severed, and when or if such relations are severed it may connect itself with any other body or denomination of Christians if it so desires.

The term or duration for which this corporation shall exist shall be perpetual.

The affairs of the corporation shall be managed by a Board of not less than five trustees, who shall from their number elect a Chairman, a Vice-Chairman, a Secretary and a Treasurer.

The highest amount of indebtedness or liability to which the corporation may at any time subject itself shall not exceed two-thirds of the value of the property of this corporation at such time.

The amount in value of real estate which the corporation may hold shall be $200,000.00.

The said corporation shall have power to acquire, hold and dispose of real estate and personal property.

notes, mortgages, stocks, bonds and securities of all kinds, and shall have full power and authority to borrow and execute its notes and or bonds therefor and to secure the same by mortgage or deed of trust upon its real and or personal property; it being understood that the title to such property shall vest in the corporation and not in the denomination with which it is connected.

Appended thereto is the following

IN THE MATTER OF THE APPLICATION FOR CHARTER FOR THE MIAMI BEACH FIRST PRESBYTERIAN CHURCH

The proposed Charter of The Miami Beach First Presbyterian Church having been presented to me for approval in conformity with Section 6195, of the Compiled General Laws of the State of Florida, and it appearing that said proposed Charter is in proper form and for a purpose and object authorized by said statute, it is, therefore, ORDERED, that the Charter of The Miami Beach First Presbyterian Church be and the same is hereby approved.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 23 day of April, A. D. 1940.

(Signed) Paul D. Barns
Judge of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida.

(Circuit Court Seal)

NO. 7

IN RE:

THE MIAMI BEACH FIRST PRESBYTERIAN CHURCH, a Non-Profit Corporation.

AMENDMENT TO CHARTER
Filed April 25, 1956
Recorded in Corporation
Book 65 at page 275
Clerk's File No. Z-44483

Recites: I, John W. Puffer, as Clerk, do certify that on April 7, 1949 a congregational meeting was held wherein, a quorum being present, it was duly moved and seconded and carried that Article VIII of the Charter, dated December 1939, be amended to read as follows:

"The Board of Trustees shall be composed of five (5) members elected by the Congregation, and shall hold office for life."

(Signed) John W. Puffer
Clerk of the Congregation of The Miami Beach First Presbyterian Church

(Signed) Willis E. Garrett
Moderator

(SEAL)

This amendment to charter coming on to be heard before me in accordance with 617.02 F.S.A. 1941, and upon consideration, it is

ORDERED, ADJUDGED AND DECREED that the foregoing amendment is approved.

DONE AND ORDERED at Miami, Florida, this 25th day of April, 1950.

(Signed) Charles A. Carroll
Circuit Judge.

NO. 6

CHARLES O. MORGAN, as Clerk.
TO
THE PUBLIC.

AMENDMENT TO CHARTER OF THE MIAMI BEACH FIRST PRESBYTERIAN CHURCH A NON-PROFIT CORPORATION.

Filed September 28, 1954
Recorded in Corporate Book 76 at page 338
Clerk's File No. DD 123215

Recites: I, Charles O. Morgan, as Clerk, do certify that on September 27, 1954, a congregational meeting was held wherein a quorum being present, it was duly moved, seconded and carried that the Charter dated April 17,

1940, approved by Circuit Court April 20, 1940, be amended as follows: Article I. amended to read:

The name of this corporation shall be The Miami Beach Independent Presbyterian Church and the corporation shall exercise its corporate existence and be located in the City of Miami Beach, Dade County, Florida.

Article II amended to delete "and to be connected with and subject to the jurisdiction of the Presbyterian Church in the United States" and to add at end of Article II "at a regularly called meeting August 2, 1954 more than three-fourths (136 for and 6 against) members voted to sever connections with and jurisdiction of the Presbyterian Church in the United States and establish an Independent Presbyterian Church".

Article III amended to strike out "Book of Church Order".

(Signed) Charles O. Morgan
Clerk of the Congregation of The Miami Beach First Presbyterian Church

(Signed) Willis E. Garrett, Moderator
(Official Seal)

This Amendment to Charter coming on this day to be heard in accordance to F.S. 617.02, and upon consideration, it is

ORDERED, ADJUDGED AND DECREED that the foregoing Amendment is approved, and that henceforth

this corporation shall be known as Miami Beach Independent Presbyterian Church.

DONE AND ORDERED at Miami, Florida this 28th day of Sept., 1954.

(Signed) Pat Cannon,
Circuit Judge.

(DEFENDANTS' EXHIBIT "B" — A colored post card photograph of church, Independent Presbyterian)

ANSWER TO CROSS-COMPLAINT, filed March 23, 1959:

"COME NOW the plaintiffs, PRESBYTERY OF THE EVERGLADES, a corporation, and CLARA KROME WILSON, for and on behalf of herself and for and on behalf of all other persons similarly situated, by their undersigned attorneys, and file this, their Answer to the Cross-Complaint herein, and for such Answer, plaintiffs aver:

1. Plaintiffs deny the allegations contained in Paragraph 1 of the Cross-Complaint.

2. Plaintiffs deny each and every of the allegations contained in Paragraph 2 of the Cross-Complaint.

3. Plaintiffs deny each and every of the allegations contained in Paragraph 3 of the Cross-Complaint.

WHEREFORE, plaintiffs having fully answered, pray that this Court render its decree in favor of the plaintiffs, as prayed for in plaintiff's complaint herein.

SIBLEY, GRUSMARK,
BARKDULL & KING
Attorneys for Plaintiffs

By: /s/ Marion E. Sibley
MARION E. SIBLEY,
of counsel.

(Certificate of service omitted)

MOTION TO AMEND CROSS-COMPLAINT, filed May 27, 1959:

"COME NOW the defendants and Cross-Complainants in the within cause, and do move to amend the Cross-Complaint as filed, by the addition to, and of the following:

1. That the corporate charter as set out herein, as Defendants' Exhibit "A", does allege that the general nature and object of the corporation was the establishment of a church organization to be Presbyterian in its doctrine, tenets and form of church government as such doctrines, tenets and government are prescribed by the Westminister Confession of Faith, Catechisms and Form of Government in use by the various Presbyterian denominations, and your Cross-Complainants do affirmatively allege that since the corporation was duly chartered, on

April 17th, 1940, and through the date and time of this action and the date and time of the filing of this Motion to Amend Cross-Complaint, your Cross-Complainants have continued to be with and under the doctrines, tenets and form of government as prescribed by the Westminister Confession of Faith, and that the corporate charter has not been violated.

5. That although a minority group from the Corporation, since the commencement of this litigation has left the church to form, on the mainland of Miami, a new church called the Calvary Church, the Corporation retains the majority of its members, has a new Minister, and continues sending missionaries to some thirty various countries and servicing various radio stations. The church organization is in full force and effect with the Christian faith being maintained, and it has so maintained its faith in the work of the Christian religion since its corporate charter, nineteen years past, and even prior to that date, and that the sustaining of the allegations of the Plaintiffs' Complaint would disrupt a work of Christian endeavor and morally and religiously wrongfully effect the destiny of various missionaries in thirty various countries; and your Cross-Complainants do attach hereto a copy of church stationery, which reflects the countries, missionaries, and radio stations serviced as of the date of this Motion to Amend Cross-Complaint, and said stationery to be made a part hereof and marked Defendants' Exhibit "C", together with two church bulletins

WHEREFORE, your Cross-Complainants pray that the Cross-Complaint, as filed herein, be duly amended to include the above and foregoing paragraphs 4 and 5.

COPELAND, THERREL, BAISDEN & PETERSON
Attorneys for Defendants and Cross-Complainants
Miami Beach First National Bank Building
Miami Beach, Florida
By (s) Robert A. Peterson
Robert A. Peterson, of Counsel

(Certificate of Service Omitted)

DEFENDANTS' EXHIBIT "C", (letterhead and two church bulletins) attached to Motion to Amend Cross-Complaint.

ANSWER TO AMENDMENT TO CROSS-COMPLAINT, filed June 11, 1959:

"COME NOW the plaintiffs by their undersigned attorneys, and file this their Answer to the Amendment to Cross-Complaint, and for such answer plaintiffs aver:

4. Plaintiffs deny each and every allegation contained in Paragraph 4 of said Amendment to Cross-Complaint.

5. Plaintiffs deny each and every allegation contained in Paragraph 5 of said Amendment to Cross-Complaint.

WHEREFORE, having fully answered, plaintiffs pray that this Court render its decree in favor of the plaintiffs as prayed for in plaintiffs' complaint herein.

SIBLEY, GRUSMARK, BARKDULL & KING
Attorneys for Plaintiffs

By: (s) Thomas H. Barkdull, Jr.
THOMAS H. BARKDULL, JR.
of counsel.

(Certificate of service omitted)

* * * *

FINAL DECREE, filed September 18, 1959:

"The plaintiffs filed their Complaint for Declaratory Decree and to Quiet Title on November 13, 1958. The plaintiff, individually, and as representative of all other persons of a class similarly situated filed this suit and alleged that the plaintiff, PRESBYTERY OF THE EVERGLADES, is a court composing a component part of the Presbyterian Church in the United States. It alleged that on or about November of 1935 an application for the establishment and formation and creation of a Presbyterian church within the city limits of Miami Beach, Florida was made, to be known as The Miami Beach First Presbyterian Church. That further in November of 1935 the persons establishing the organization entered into a covenant with the Presbyterian Church in the United States by answering affirmatively their reliance on God for strength, promising and covenanting to walk together as an organized church on the principles of the faith and

order of the Presbyterian Church in the United States, and to study the purity and harmony of the whole body.

Plaintiffs alleged that after the incorporation of said church, on or about March, 1941, said church purchased the following described property, to-wit:

> All of Block 3 of NORMANDY BEACH SOUTH, a subdivision of Dade County, Florida, according to plat thereof recorded in plat book 21 page 54 of public records of Dade County, Florida.

On or about August 2, 1954, the defendant, GARRETT, as Pastor of Preacher, and certain members of The Miami Beach First Presbyterian Church withdrew from membership of the Presbyterian Church in the United States, all contrary to the edicts and orders of the Book of Church Order, and GARRETT, without power and authority, voted to withdraw from the Presbyterian Church in the United States.

The plaintiffs prayed that this Court of Equity:

(a) Would establish that the members of The Miami Beach First Presbyterian Church who remain a part of the organized Presbyterian Church in the United States are entitled to the use and ownership of the property described in the complaint.

(b) That the Court determine and establish the names of each and every person entitled to participate in and utilize the church property for the aims and purposes of the Presbyterian Church in the United States.

(c) That the Court declare the PRESBYTERY as the authority of the Presbyterian Church in the United States entitled to bring and maintain this suit.

(d) That the Court declare that the persons who are entitled to manage and control the defendant corporate entity.

(e) That this court quiet the title to the property as described and find and declare that the title to said property is vested and held by and for the benefit of the organized Presbyterian Church on Miami Beach, which is part of the family of churches composing the Presbyterian Church in the United States.

(f) Other equitable relief.

The plaintiffs filed a Notice of Lis Pendens against the real property described as aforesaid, and the defendants filed a Motion to Dismiss. This Court, on February 4, 1959, reserved ruling on the defendants' Motion to Dismiss until final hearing.

On March 4, 1959, the defendants filed their Answer and Cross-Complaint admitting the organization and establishment of the corporation, The Miami Beach First Presbyterian Church, and, further alleging that the construction of the church premises was built from individual contribution proceeds of the members, without any financial aid from any outside religious group or unit, including the plaintiffs herein. The defendants further allege that the actions of the plaintiffs are in violation of the statute of frauds, particularly Sections 689.05 and 689.06, F. S. A.

The defendants further allege that the vote severing the connections of the Miami Beach group from the PRESBYTERY stood at 136 for and 6 against on August 6, 1954. The plaintiff WILSON was not one of the 6 members present.

Further answering, the defendants admit the meeting of August 2, 1954, and allege that the corporate charter had been unchallenged for over fourteen years by the PRESBYTERY or any unit thereof, and that in reliance upon said charter constructed the various units of the church had been made. The defendants further denied that the decree and judgment against GARRETT as Preacher and the ruling elders of said church had the force and effect of rendering the church property which was acquired by an absolute deed and developed by independent work and contributions of the defendants were subject to the control, management and use of members of a group known as The Miami Beach First Presbyterian Church.

The defendants further filed a Cross-Complaint alleging that the corporate charter dated April 7, 1940 provided that the corporation shall have the power to acquire, hold and dispose of real estate and personal property and that the title to the property shall vest in the ground and not in the denomination with which it is connected. That by deed dated March 6, 1941, the defendants acquired title to said property for $8,500.00, with no restrictive uses therein. That for over nineteen years after the organization of the non-profit corporation, the plaintiff, PRESBYTERY, is inequitable, unfair and unwarranted in seeking the church property by virtue of this suit.

Answer to the Cross-Complaint was filed denying the allegations of said Cross-Complaint, and this Court fully heard the testimony of the parties hereto at final hearing.

This Court has resolved various conflicts in the testimony presented before it and finds the facts to be as follows:

In 1934 a charter was proposed by 35 persons for the creation of a Presbyterian church on Miami Beach, Florida; that the church was then unincorporated and was subsequently chartered in accordance with the principles of the faith and order of the Presbyterian Church in the United States. There is a distinction between the Southern Presbyterian Church and the Northern Presbyterian Church; and this organization was chartered under the principles of faith and order of the Southern Presbyterian Church group, and from the date of the charter until the present day, there has been no testimony presented before this Court which has shown that the members of the congregation have failed to abide by those principles of the faith and order. There has been no denial that the Miami Beach Independent Presbyterian Church, a non-profit corporation, has always practiced according to the faith and order of the Presbyterian Church of the United States.

The corporation was formed by a Circuit Court Order on April 23, 1940, known as The Miami Beach First Presbyterian Church. The corporate charter contained a provision in connection with the church in accordance with the provisions of the Southern Presbyterian Church that the property of the church organization could be sold,

bought or mortgaged without reference to any higher body. For over nineteen years, the Southern Presbyterian Church took with it the name of Presbytery when it separated from the Northern Presbyterian Church together with all church property. The corporate charter, Article II, states as follows:

> "The general nature and object of this corporation shall be to establish a church organization or society to be Presbyterian in its doctrine, tenets and form of church government as such doctrines, tenets and government are prescribed by the Westminster Confession of Faith, Catechisms and Form of Government in use by the various Presbyterian denominations, and to be connected with and subject to the jurisdiction of the Presbyterian Church in the United States; provided however, that by vote of three-fourths (¾) of the members of this corporation, who are present at a regularly called meeting, its connections with and jurisdiction of the said Presbyterian Church in the United States may be severed, and when or if such relations are severed it may connect itself with any other body or denomination of Christians if it so desires."

The Miami Beach group agreed to abide by the Westminster Confessions of Faith, Catechisms and Form of Government and to have a form of church organization Presbyterian in its nature. There is no testimony in this record to reflect that the Articles and this profession of faith were ever violated by the defendants. The record is clear that no money for financial support of the Miami Beach church group was ever received from any higher

body of Presbytery. The corporate charter members raised funds within the church and when visitors visited the church in Miami Beach, Florida from various denominations.

On or about March 6, 1941, by warranty deed to the corporation known as The Miami Beach First Presbyterian Church, the property was purchased for $8,500.00. Subsequently, the Miami Beach group erected a church edifice and house of worship having a value of approximately $187,000.00 and encumbered by a mortgage of approximately $22,000.00. All through the period during which funds were collected and religious services conducted, no attempt was made to in any way alter or change The Miami Beach First Presbyterian Church charter. The Book of Church Order, Section 163, states as follows for an incorporated church:

> "If a particular church is incorporated, the provisions of its charter and bylaws must always be in accord with the Standards of the Presbyterian Church in the United States. If the congregation is an incorporated body, all the communing members of that church shall be members of the corporation. The officers of the corporation, whether they be given the title 'Trustee' or some other title, shall be elected from among the members of the corporation in a regularly constituted congregational meeting. The powers and duties of such officers must not infringe upon the powers and duties of the Session or the Board of Deacons. All funds collected for the support and expense of the church and for the benevolent purposes of the church shall be

controlled and disbursed by the Session and the Board of Deacons as their relative authorities may from time to time be established and defined. To the officers of the corporation may be given by the charter and bylaws of the corporation any or all of the following responsibilities: The buying, selling, and mortgaging of the property for the church, the acquiring and conveying title to such property, the holding and defending title to the same, the managing of any permanent special funds entrusted to them for the furtherance of the purposes of the church, provided that such duties do not infringe upon the powers and duties of the Session or of the Board of Deacons. In buying, selling, and mortgaging real property, such officers shall act solely under the authority of the corporation, granted in a duly constituted meeting of the corporation."

The membership of the church pursuant to the Order and Law as established by the Miami Beach corporate charter and subject to the corporate charter are the members of the corporation. In connection with the mortgaging of real property, the Book of Church Order states as follows:

"The officers shall act solely under the authority of the corporation."

Section 57 of the Book of Church Order governing the property or jurisdiction in civil affairs reads as follows:

"These assemblies are altogether distinct from

> the civil magistracy, nor have they any jurisdiction in political or civil affairs. They have no power to inflict temporal pains and penalties, but their authority is in all respects moral or spiritual."

Section 58 further states:

> "The jurisdiction of Church courts is only ministerial and declarative, and relates to the doctrines and precepts of Christ, to the order of the Church, and to the exercise of discipline."

It therefore appears from the corporate charter that the control of the corporate entity during the periods from 1935 to 1939 rested in the members of said corporation and not in the higher Presbytery.

In 1954, after fourteen years that the corporate charter was in existence, the PRESBYTERY made formal demand upon the Miami Beach Independent Presbyterian Church to change its charter. It appears that the PRESBYTERY objected to extensive missionary program of the Miami Beach church and objected to the use of a Scofield Bible. On or about August 2, 1954 the members of the PRESBYTERY appeared before the Miami Beach congregation and demanded the corporate charter be changed. The church members, after taking a vote, voted against changing the name of the charter and further voted to sever its relations with the PRESBYTERY by a vote of 136 for and 6 against. This Court, by amendment of the corporate charter on September 28, 1954, approved the change of name from The Miami Beach First Presbyterian Church to the Miami Beach Independent Pres-

byterian Church. The congregation retained the Presbyterian form of government and retained the name Presbyterian, and the congregation continued to ascribe to the Westminster Confessions of Faith. The present church organization has over 150 members at the present time.

It has been firmly settled in the law that religious societies and churches may, by their governing bodies, adopt a constitution and prescribe rules and regulations as to their own government, discipline, worship and doctrine. Such constitution, rules and regulations are obligatory upon the members, the congregations and officers of such societies and are given effect by the civil courts so long as they are reasonable and not inconsistent with or repugnant to the laws of the land and are conformable and subordinate to the charter of the society where incorporated. The mode of submitting proposed amendments to the constitution of a religious association may be devised and proclaimed by its general officers if not contrary to the laws of the land or other provisions of the old constitution. A constitution which declares that it shall not be altered except by requests of two-thirds of the whole society merely requires that no alteration shall be made without the consent of two-thirds of the members. A church incorporated for the promotion of a defined fundamental religious faith or doctrine cannot by amendment change its religious creed or faith except by the unanimous vote of its members at least in so far as its property is held in trust for the defined purposes of its organization. It is generally held that a majority of those present and voting at a regular meeting of a church or religious society governs and its actions are binding on the whole body. See 45 Am. Jur., Religious Societies, Sec. 22, page 737.

It has been held that where property has been dedicated by way of trust for the purpose of supporting or propagating definite religious doctrines or principles, it is the duty of the courts to see that the property so dedicated is not diverted from the trust which has been thus attached to its use so long as there are persons who are qualified within the meaning or the original dedication and are also willing to teach the doctrines or principles prescribed in the act of dedication, and so long as there is anyone so interested in the execution of the trust as to have a standing in court, a diversion of the property or fund to other and different uses can be prevented. This is the general doctrine of courts of equity as to charities and it seems equally applicable to ecclesiastical matters. See. 45 Am. Jur., Religious Societies, Sec. 61; 8 ALR 106, s. 70 ALR 77; 13 LRA 198; 32 LRA 95; 3 LRA (NS) 866.

Whether or not a church or religious society has been maintained in conformity with the requirements of a trust is a question of fact. In all such cases, however, the trust and its abuses must be clearly established in accordance with the rules by which courts are governed in administering justice and there must be a real and substantial departure from the purposes of the trust amounting to a perversion of it to authorize the exercise of equitable jurisdiction in granting relief. German E. L. Trinity Cong. v. Deutsche E. L. Dreieinigkeits Gemeinde, 246 Ill. 328, 92 N.E. 868; First Presby. Church v. First Cumberland Presby. Church, 245 Ill. 74, 91 N.E. 761.

Hence, the mere adoption by a religious society of a revised Confession of Faith which is not antagonistic to the old one in force when property was granted in

trust for the maintenance of a meeting house for the society does not constitute such a conversion or breach of trust as to call for the interposition of equity to prevent it. Nor is an attempt to make use of property of a religious society for purposes foreign to the trust under which it is held shown by the fact that its pastor is excluded from the church and the majority vote to affiliate with another synod of the same denomination, where no change is worked in the purposes of the association, and, by its constitution, the majority are entitled to rule.

It appears from the record in this case that the defendant the Miami Beach Independent Presbyterian Church, and its present members, are conducting the subject religious society in conformity with the requirements of the charter and trust, and there has been no real or substantial departure from the purposes of said church charter and trust which would amount to a perversion of it, and therefore, this Court does not feel that it has authority to exercise equitable jurisdiction in granting the plaintiffs' relief.

The defendants have cited to this Court as authority the case of St. John Presbytery v. Central Presbyterian Church of St. Petersburg, Fla. 1958, 102 So. 2d 714. The Court in the St. John case based its opinion upon the fact that the charter of the non-profit religious body which took title to the property provided that the membership therein was to be governed by the Book of Church Order of the Presbyterian Church. That was not the case herein as shown by the fact that the corporate charter of the Miami Beach group provided that by vote of three-fourths of the members of this corporation who are pres-

ent at a regularly called meeting its connection with and jurisdiction of said Presbyterian Church in the United States may be severed and when or if such relations are severed, it may connect itself with any other body or denomination of Christians as it so desires.

One of the Articles of said charter clearly provides that the corporation shall have power to acquire, hold and dispose of real estate and personal property . . . of all kinds and shall have full power and authority to borrow and execute its notes and all bonds and secure the same by mortgage or deed of trust upon its real and or personal property; it being understood that the **title to such property shall vest in the corporation and not in the denomination with which it is connected.**

It can be seen that the corporate charter members who organized the original Miami Beach First Presbyterian Church were on notice that the property for which they sought these various funds from its members and others were taking title to the respective properties, both real and personal, in the corporate name and that said property was to vest in the corporation and not in the denomination with which it is connected. This Court feels that that is a distinct difference from the St. John case and is material to the issues in this case in that the plaintiffs being the minority were on notice of the provision of this charter and presently now seeks to quiet the title and a declaratory decree upon said issues. The provisions of said charter are clear and unambiguous and the title to said property to be taken in the name of the local church organization would make it conclusive that said title and property belonged to the Miami Beach Independent Presbyterian Church, formerly The Miami Beach First Presbyterian Church, a non-profit corporation.

This Court cites with approval and authority the case of Partin v. Tucker, 126 Fla. 817, 172 So. 89; Reid v. Barry, 93 Fla. 849, 112 So. 846; Watson v. Jones, 13 Wall. 679, 20 L. Ed. 666. In the case of Partin v. Tucker, supra, the Supreme Court of Florida said:

> "It appears to be the holding of a majority if not all of the courts that to deprive those holding property, conveyed as this was, of the use and control of the property, it must be shown that the successor trustees have diverted the property to a use fundamentally different from that contemplated in its acquisition; and further that a mere change in some of the articles of faith by the majority of the members of the congregation while adhering to the fundamental principles of Christianity upon which the organization is founded, and the use of the church property by such congregation teaching such changed articles of faith though adhering to the original fundamental principles of Christianity, will not constitute such a diversion of church property as to warrant the courts in interference."

Based upon the foregoing facts and opinions of law, it is, upon due consideration,

ORDERED, ADJUDGED AND DECREED:

1. That this Court has jurisdiction of the subject matter hereof and of the parties hereto.

2. That the equities of this cause are with the defendants and against the plaintiffs.

3. That the legal and equitable title to the real property described aforesaid is in the defendants, the Miami Beach Independent Presbyterian Church, also known as The Miami Beach First Presbyterian Church, a non-profit corporation.

4. That the Notice of Lis Pendens filed herein by the plaintiffs be and the same is herein quashed and the Clerk of the Circuit Court is herein ordered to make the neccessary notations of record.

5. That the costs of these proceedings be taxed against the plaintiffs.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 18 day of September, 1959.

PAT CANNON
Circuit Judge

Opinion filed January 5, 1961.

An Appeal from the Circuit Court for Dade County, Pat Cannon, Judge.

SIBLEY, GRUSMARK, BARKDULL & KING, for Appellants.

COPELAND, THERREL, BAISDEN & PETERSON, for Appellees.

HORTON, Chief Judge.

This appeal is from a decree adverse to the appellants. In substance, the decree adjudicated that equitable title to the real property upon which was located a church was in the appellee Miami Beach Independent Presbyterian Church, a non-profit corporation. The individual appellees are members of, and representative of a group of persons formerly members of the Miami Beach First Presbyterian Church, who had withdrawn and severed their connections with the Presbyterian Church in the United States. At the time of the withdrawal, the Miami Beach First Presbyterian Church was an organized member of the Presbyterian Church in the United States and the appellee Garrett was its duly ordained minister.

A chronological history of the facts which gave rise to this litigation is: In November, 1935, the appellant Presbytery approved an application from some 35 persons for the establishment of a Presbyterian Church in Miami Beach to be known as the Miami Beach First Presbyterian Church. The application was accepted and approved in accordance with the provisions of the Book of Church

Order, the governing rules of the Presbyterian Church in the United States, which in part provided that a church may be organized by the authority of the Presbytery and dissolved by it. Predicated upon certain required pledges and covenants, the Presbytery declared the persons applying to be members of the Presbyterian Church, and that they constituted a church according to the Westminster Confession of Faith and the rules of government and discipline as provided in the Book of Church Order. After the establishment of the Miami Beach First Presbyterian Church, a corporate non-profit charter under that name was obtained in 1940. The charter provided that all members of the church at the time of the organization, and all other persons who became members thereafter, would be members of the corporation, provided that whenever any member should cease to be a communicant member in good standing, such person would cease to be a member of the corporation. Article II of the charter further provided that the corporate objects and general purpose were to establish a church organization or society to be Presbyterian in its doctrines, tenets and form of government, as such doctrines, tenents and government are prescribed by the Westminster Confession of Faith, Catechisms and form of government in use by the various Presbyterian denominations and to be connected with and subject to the jurisdiction of the Presbyterian Church in the United States. In the same article was the following provision: "* * * provided, however, that by vote of three-fourths (3/4) of the members of this corporation, who are present at a regularly called meeting, its connection with and jurisdiction of the said Presbyterian Church in the United States may be severed, and when or if such relations are severed it may connect itself with any other body or denomination of

Christians if it so desires." Another provision of the charter, brought into perspective by the decree appealed, is the following: "* * *" it being understood that the title to such property shall vest in the corporation and not in the denomination with which it is connected."

On or about March 6, 1941, certain real property was purchased, the title to which was taken in the name of the non-profit corporation, and thereafter a church was erected thereon. The funds for the erection of this church were furnished by the membership and by visitors of like and other denominations in attendance. In April, 1954, the appellant Presbytery directed a letter to the appellee Garrett in which he was advised that Article II of appellee's corporate charter be amended or replaced to bring it in accord with the Book of Church Order. In July, 1954, a notice of a meeting to be called for August 2, 1954, for the purpose of withdrawing the church from its membership in the Presbyterian Church of the United States was published. Upon learning of this proposed action, the appellant Presbytery issued an injunctive order prohibiting appellee Garrett and the members of the session of said church, as well as each and every member thereof, from attending such meeting and taking any action on the proposed withdrawal from the church. However, contrary to the injunctive order, the appellee Garrett, members of the session and members of the church met and, by an overwhelming majority, voted to secede from the Presbyterian Church in the United States. Thereafter, the seceding members of the local church continued to use the property as a house of worship for an independent church, and changed the name to the present corporate appellee by an amendment to the corporate charter. Following the development of this schism,

the appellant Presbytery, after due notice to the parties concerned, rendered a judgment and decree against the appellee Garrett, the former session members of the Miami Beach First Presbyterian Church and all other persons who had seceded, adjudicating that they were no longer members of the Miami Beach First Presbyterian Church and directing that the church property be turned over to the appellant Presbytery or its representative. This directive was ignored and the litigation now before us was instituted.

The appellants contend that the Presbyterian church has a representative form of church government and as such, its members are bound by the law of the church contained in the Book of Church Order; that under this form of government, a withdrawal of a majority of the members of a local church from the Presbytery did not carry with it the use of or right to the church property. On the contrary, the church property belonged exclusively to the loyal members of the church, subject to administration by the Presbytery. This contention, the appellants point out, is supported by the principles enunciated in St. John's Presbytery v. Central Presbyterian Church of St. Petersburg, Fla. 1958, 102 So. 2d 714, a case in which the St. John's Presbytery represented the same authority as the appellant Presbytery does in the case at bar. The members of the St. Petersburg church voted to sever their connections with the denomination. The trial court held that the property of the local church belonged to the majority who had voted to withdraw from the denomination. Upon appeal, the Supreme Court of Florida reversed the cause and pointed specifically to the fact of management of the affairs of the church or corporation according to the Book of Church Order which could not be rescinded or modified

except by the Presbytery of the Presbyterian Church in the United States. The court said:

> "When the church is representative, republican or episcopal in government, the authorities uniformly hold that the church property whether held by an express or an implied trust cannot be diverted from the parent church by those who withdraw from it and form a separate denomination. It matters not whether those who withdraw from the mother church constitute a majority or minority faction, the church property remains with the mother church. There are exceptions to this rule when the schism occurs in a church whose government is congregational in form like the Baptist or Congregational denominations but in churches bound together by associated eccliastical government when the local church is obedient to a larger or more important religious organization and is governed by it, such as the Presbyterian, Catholic, Episcopal, Methodist and Lutheran. I have found no exception to this rule. They could not function under any other rule."

The appellees, on the other hand, contend that the provisions of their corporate non-profit charter, which permitted a severance of the appellee church from the Presbytery, did not thereby forfeit the church property to the Presbytery so long as the church continued to adhere to the principles of the Protestant Christian faith and the Presbyterian form of church government. This contention is allegedly supported by the doctrine announced in Partin v. Tucker, 126 Fla. 817, 172 So. 89.

We are persuaded to the view that the appellants' position as supported by the case of St. John's Presbytery v. Central Presbyterian Church of St. Petersburg, supra, is sound. The Partin case involved litigation arising as the result of dissention between members of the Pinegrove Baptist Church which was an unchartered religious assembly organized under the congregational plan of government. This plan is distinguished from the representative form of ecclesiastical government applicable to the appellant church. See Watson v. Jones, 13 Wall. 679, 20 L. Ed. 666; Presbytery of Bismark v. Allen, 74 N. D. 400, 22 N. W. 2d 625. Admittedly the two types of church organization require the application of different rules and in this instance, we feel that the facts of the present case fall squarely within the rule announced in the St. John's Presbytery case. The fact that legal title to the property was vested in a non-profit corporation, with a proviso that the members of the corporation could sever themselves from the mother church, could not affect the application of the rule that their organization, tenets of faith and practices were admittedly governed by the Book of Church Order and the ecclesiastical government recognized thereby. The members who first organized the appellee church, as well as those who afterwards obtained membership, took an oath of allegiance to the tenets of faith and subjected themselves to the discipline and government of the mother church. **The property was impressed with a trust for the uses and purposes of those belonging to and professing to be members of the Presbyterian Church in the United States.** The majority who withdrew were no longer members of the mother church and, therefore, had no right, after withdrawal, to the use of the church property. The amendment to the charter, changing the corporate name of the majority who had se-

ceded, may be valid and satisfactory to the seceders, but it could have no effect upon the property and the rights of those who remained faithful to the mother church. Cf. Rev. Felix Rekas, et al., v. Polish National Catholic Church, Western Diocese, et al., Fla. 1958, 102 So. 2d 705.

In a representative form of church government, individual members of a particular church or congregation are free to withdraw their membership at any time from such church or congregation, but they are not permitted to take the church property with them. St. John's Presbytery v. Central Presbyterian Church of St. Petersburg, supra; Presbytery of Bismark v. Allen, supra. In this instance, their actions in attempting to appropriate the church property for uses inconsistent with and in violation of higher church authority were void.

Accordingly, the decree appealed is reversed and the cause is remanded for the entry of a decree not inconsistent with the views expressed herein.

Reversed and remanded.

PEARSON and CARROLL, CHAS., JJ., concur.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL THIRD DISTRICT

IN THE
SUPREME COURT OF FLORIDA

CHARLES O. MORGAN, individually and as the representative of all other persons of a class similarly situated, WILLIS E. GARRETT, and THE MIAMI BEACH INDEPENDENT PRESBYTERIAN CHURCH, also known as THE MIAMI BEACH FIRST PRESBYTERIAN CHURCH, a corporation,

Petitioner,

vs.

PRESBYTERY OF THE EVERGLADES, a corporation, and CLARA KROME WILSON, for and on behalf of herself and for and on behalf of all other persons similarly situated,

Respondent.

TO THE SUPREME COURT OF FLORIDA:

Petitioners, CHARLES O. MORGAN, et al, present this, their petition for a writ of certiorari and state:

1. Petitioners seek to have reviewed the order (or decision) of the District Court of Appeal, Third District, dated 5th day of January, 1961, and filed in the records of said District Court of Appeal on the 5th day of January, 1961, recorded in Minute Book 4, Page 62, of the

Records of said Court. A copy of said decision is attached hereto as Exhibit "A".

Rehearing was denied on the 25th day of January, 1961, which order was recorded in the Records of said Court in Minute Book 4, Page 91, on the 25th day of January, 1961.

2) This petition is presented under and pursuant to Article V, Section 4, of the Florida Constitution, and Rule 4.5c of the Florida Appellate Rules. And petitioner states that said order (or decision) of the District Court of Appeal, Third District, with the facts as existing in the instant case, is in direct conflict with decisions of the Florida Supreme Court. These conflicting decisions are cited and discussed below, and in Petitioners' supporting brief.

3) This petition is accompanied by a certified transcript of the record of the proceedings, including the decision petitioners seek to have reviewed and the supporting brief.

4) The following are the facts of the case:

(a) It is sought by this petition to reverse the said decision and order of said District Court of Appeal which had reversed the final decree of the Circuit Court (TR 1-) and had remanded the cause for an entry of a mandate consistent with the views expressed in said decision. (TR 11).

(b) A non-profit Florida corporation was formed with charter approved in 1940 which Florida cor-

poration was called THE MIAMI BEACH FIRST PRESBYTERIAN CHURCH, a corporation. The charter provided that, by vote of three quarters of the members of the corporation, its connection with the jurisdiction of the Presbyterian Church in the United States "may be severed". Another provision of the charter provided "it being understood that the title to such property is vested in the corporation and not in the denomination with which it is connected". Vacant real property was purchased on Miami Beach, Florida on March 6, 1941 by the non-profit corporation and thereafter a church was erected thereon. The funds for the erection of the church were furnished over the years by the members and by visitors of various denominations in attendance.

(c) In July, 1954, after an installation with a value of at least $187,000.00 was built on the premises, a notice of a meeting to be called for August 2nd, 1954 for the purposes of withdrawing the Church from its membership in the Presbyterian Church in the United States was published. The meeting was duly held and the Church by an overwhelming majority, with only six members voting against withdrawal, voted to be independent in the sense of and as concerns Presbytery only; but continued to this date adhering to the Presbyterian faith, to the Westminster Confession of Faith, to the Presbyterian Book of Church Order and the Presbyterian Organization.

(d) The articles of by-law were changed with the new name being the MIAMI BEACH INDEPENDENT PRESBYTERIAN CHURCH.

(e) No action was commenced against the Church until November, 1958, and in the meantime the

record reflects the Church prospered, membership grew and from a budget of $115,000.00 in 1959, $86,000.00 was paid for the support of missionaries dedicated to the Protestant faith and the work of the Lord. No financial support was received from Presbytery and no deviation was made from the Presbyterian Book of Church Order or the Westminster Confession of Faith.

(f) By final decree dated September 18, 1959, the Circuit Court of the 11th Judicial Circuit of Florida, in and for Dade County, in Chancery, held in favor of the defendant, Charles O. Morgan, et al, and your petitioners herein, and what might be called the "local congregation".

5) On the foregoing facts the said District Court of Appeal was presented with the following points of law by the Petitioners:

I. WHERE THE DENOMINATION AND CHURCH CONGREGATION CONTINUES, AFTER SEVERANCE LAWFULLY PROVIDED FOR IN THEIR CORPORATE CHARTER, THE PRINCIPLES OF PROTESTANT CHRISTIAN FAITH, AND CONTINUES THE PRESBYTERIAN FORM OF CHURCH GOVERNMENT AND RETAIN THE NAME PRESBYTERIAN, UNDER THE DOCTRINE OF PARTIN VS. TUCKER (FLA.) (172 SO. 89) THE CONTROL AND MAINTENANCE OF THEIR OWN CHURCH PROPERTY SHOULD REMAIN WITH SAID GROUP.

II. UNDER THE EQUITABLE DOCTRINE OF LACHES AND ESTOPPEL, WITH THE CORPORATE CHARTER IN EFFECT WITHOUT CHANGE FOR NINETEEN (19) YEARS, WITH FIVE (5) YEARS FROM DATE OF SEVERANCE, PLAINTIFFS ARE BARRED FROM TAKING POSSESSION FROM THE PRESENT MAJORITY AND CONTROLLING MEMBERS OF THE CORPORATION.

III. FREEDOM OF RELIGION AS GUARANTEED BY THE FLORIDA CONSTITUTION CONTROLS THE MEMBERS AND MEMBERSHIP AND CHURCH COURTS HAVE NO JURISDICTION OF THE REALTY.

IV. CHURCH DISCIPLINE AND CHURCH COURTS AS PER BOOK OF CHURCH ORDER ARE MORAL AND SPIRITUAL ONLY, WITH THE CHURCH BEING CONGREGATIONAL AS TO ITS PROPERTY, WITH TITLE DIRECTLY IN THE CORPORATION.

V. THE CITED CASE OF ST. JOHN'S PRESBYTERY v. CENTRAL PRESBYTERIAN CHURCH OF ST. PETERSBURG, 102 SO. 2d 714, IS NOT APPLICABEE WHEN APPLIED TO INSTANT FACTS.

6) Basically the four points of law on this Petition for Writ of Certiorari are

I. WHERE THE DENOMINATION AND CHURCH CONGREGATION CONTINUES AFTER SEVERANCE LAWFULLY PROVIDED FOR IN THEIR CORPORATE CHARTER, THE PRINCIPLES OF PROTESTANT CHRISTIAN FAITH, AND CONTINUES THE PRESBYTERIAN FORM OF CHURCH GOVERNMENT AND RETAINS THE NAME PRESBYTERIAN UNDER THE DOCTRINE OF PARTIN VS. TUCKER (FLA.) (172 SO. 89) SHOULD THE CONTROL AND MAINTENANCE OF THEIR OWN CHURCH PROPERTY REMAIN WITH SAID CONGREGATION, PETITIONER HEREIN?

II. UNDER THE EQUITABLE DOCTRINE OF LACHES AND ESTOPPEL, WITH THE CORPORATE CHARTER IN EFFECT WITHOUT CHANGE FOR NINETEEN (19) YEARS, WITH FIVE (5) YEARS FROM DATE OF SEVERANCE, ARE THE RESPONDENTS BARRED FROM TAKING POSSESSION FROM THE PRESENT MAJORITY AND CONTROLLING MEMBERS OF THE CORPORATION?

III. DOES FREEDOM OF RELIGION, AS GUARANTEED BY THE FLORIDA CONSTITUTION AND UNITED STATES

CONSTITUTION, GOVERN AND CONTROL THE LOCAL MEMBERS AND MEMBERSHIP, AND DO ECCLESIASTICAL CHURCH COURTS HAVE NO JURISDICTION OF THE REALTY?

IV. IS THE CASE AT POINT DISTINGUISHABLE FROM THE PRINCIPLES ENUMERATED IN THE CASE OF ST. JOHN PRESBYTERY v. CENTRAL PRESBYTERIAN CHURCH OF ST. PETERSBURG, 1958 (102 So. 2nd 714)?

From the facts, as stated, despite some nineteen years of inactivity by Presbytery, when the Church property was built from a vacant lot to valuable realty with no help from Presbytery, when the real property in question went directly into the non-profit corporation, when the majority who withdrew from Presbytery continued use of the Presbyterian Book of Church Order, and organization was used, the District Court of Appeals ruled that the majority and Petitioners herein still had no right to use of the Church property, and thus reversed the decree appealed from in favor of Respondents; and remanded the cause for the entry of a decree "not inconsistent with the views expressed herein".

The decision of the District Court of Appeal, Third District, which petitioner seeks to have reviewed is in direct conflict under the facts which held with decisions of the Supreme Court of Florida, to-wit:

(a) Although different facts are at hand the

Florida case of State ex rel Singleton v. Woodruff, (13 So. 2d 704) states:

> "Freedoms of religion and of the press as guaranteed by Constitution of U. S. Amendments 1, 14 and this Section and Section 13 of the Declaration of Rights are absolute so long as public morals, public health, public safety and convenience are observed."

and it is submitted, therefore, to take the house of worship from this local congregation after they built it with their contributions and their funds would be a violation of the guarantee of the Florida Constitution granted to its citizens and in particular as set out in the Constitution of the State of Florida, Section 5, to-wit:

> "RELIGIOUS FREEDOM: LIBERTY OF CONSCIENCE, ETC. The free exercise and enjoyment of religious profession and worship shall forever be allowed in this State, and no person shall be rendered incompetent as a witness on account of his religious opinions, but the liberty of conscience hereby secured shall not be so construed as to justify licentiousness or practices subversive of or inconsistent with the peace or moral safety of the State or society."

(b) That the doctrine of the Florida case of Partin vs. Tucker, (172 So. 89) should control, as distinguished from other cases involving Presbytery on the basis of the facts that Partin v. Tucker states

> "It must be shown that the successor trustees

> have diverted a property to a use fundamentally different from that contemplated in its acquisition.";

that in the instant case where the property went directly into the corporation which retained the right of severance, where the congregation remained proud of and used its name "Presbyterian"; continued the use of the Book of Church Order and the Westminster Confession of Faith, that the decision of the District Court of Appeal is therefore in direct conflict with Partin v. Tucker **under the instant circumstances.**

7. Because of the reasons and authorities set forth in Petitioners' Brief, it is understood that the decision sought to be reviewed is erroneous, since it conflicts with prior decisions of the Supreme Court of Florida as concerns these facts.

WHEREFORE, Petitioners request this Honorable Court to grant a Writ of Certiorari and enter its order quashing the decision and order sought to be reviewed, approving the said decisions set out herein of the Supreme Court of Florida as related to these facts, together with the guarantee of religious freedom under the Florida constitution and granting such other and further relief as shall seem right and proper to this Honorable Court.

COPELAND, THEREL, BAISDEN & PETERSON
Attorneys for Petitioner Charles O. Morgan, et al
Miami Beach First National Bank Bldg.
Miami Beach, Florida

By s Robert A. Peterson
ROBERT A. PETERSON, Of Counsel.

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Certiorari was mailed to Sibley, Grusmark, Barkdull & King, 605 Lincoln Road Building, Miami Beach, Florida, February 17th, 1961.

s Robert A. Peterson
ROBERT A. PETERSON

CASE NO. 31,006

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1961

CHARLES O. MORGAN, individually, and as the representative of all other persons of a class similarly situated, WILLIS E. GARRETT, and THE MIAMI BEACH INDEPENDENT PRESBYTERIAN CHURCH, also known as The Miami Beach First Presbyterian Church, a corporation,

Petitioner,

vs.

PRESBYTERY OF THE EVERGLADES, a corporation, and CLARA KROME WILSON, for and on behalf of herself, and for and on behalf of all other persons similarly situated,

Respondent.

Opinion filed September 13, 1961

Writ of Certiorari to the District Court of Appeal, Third District

Robert A. Peterson and Copeland, Therrel, Baisden & Peterson, for Petitioner

Marion E. Sibley and Sibley, Grusmark, Giblin, King & Levenson, for Respondent

PER CURIAM.

Writ of certiorari having heretofore issued, argument having been heard and briefs considered and it now appearing that the writ was improvidently issued and that this court is without jurisdiction, the writ of certiorari is quashed and the cause dismissed.

It is so ordered.

TERRELL, THOMAS, HOBSON, DREW, THORNAL and O'CONNELL, JJ., concur

ROBERTS, J., dissents

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1961
MONDAY, OCTOBER 23, A. D. 1961

CHARLES O. MORGAN, ET AL.,

Petitioners,

vs.

PRESBYTERY OF THE EVERGLADES,
a corporation, et al,

Respondents.

On consideration of the Petition for Rehearing filed by Attorneys for Petitioners,

IT IS ORDERED by the Court that the said petition be and the same is hereby denied.

A true copy.
TEST:
S Guyte P. McCord
GUYTE P. McCORD
Clerk, Supreme Court

(SEAL)

(THE OPINION IN THE ABOVE CAUSE QUASHING WRIT OF CERTIORARI AND DISMISSING CAUSE HAS TODAY BEEN SENT TO THE CLERK OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT.)

IN THE SUPREME COURT OF FLORIDA

I, GUYTE P. McCORD, Clerk of the Supreme Court of Florida, do hereby certify that the attached and foregoing pages numbered from 1 to 187, both numbers inclusive, constitute a true and correct copy of the transcript of record of the pleadings and proceedings filed in the Supreme Court of Florida in that certain cause wherein Charles O. Morgan, individually and as the representative of all other persons of a class similarly situated, Willis E. Garrett, and The Miami Beach Independent Presbyterian Church, also known as The Miami Beach First Presbyterian Church, a corporation, were Petitioners and Presbytery of the Everglades, a corporation, and Clara Krome Wilson, for and on behalf of herself, and for and on behalf of all other persons similarly situated, were Respondents, and contain a true and correct recital and copy of all such papers and proceedings in said cause which have been directed to be included in said record by direction of the parties; all as the same appears among the records and files of my said office.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of the Supreme Court of Florida, at Tallahassee, the Capital, on this the 10th day of January, 1962.

GUYTE P. McCORD
Clerk of the Supreme Court of Florida.